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## DAKOTA ACCESS:

### Construction now 'would be a tragedy' — critics

Ellen M. Gilmer, E&E reporter

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American Indian tribes are urging Dakota Access pipeline backers to hold off on construction plans, despite a federal court order yesterday lifting a work freeze on part of the embattled oil project.

Lawyers for the Standing Rock Sioux Tribe noted that while the U.S. Court of Appeals for the District of Columbia Circuit refused to extend an injunction on a contested stretch of the pipeline's route, the Obama administration is still weighing whether to grant a necessary easement across Lake Oahe, part of the Missouri River.

Map by E&E News.

Dakota Access LLC should grant the administration's September request that it voluntarily delay nearby construction until that easement is issued, Earthjustice attorney Jan Hasselman said.

"We call on Dakota Access to heed the government's request to stand down around Lake Oahe," Hasselman said in a statement. "The government is still deciding whether or not Dakota Access should get a permit. Continuing construction before the decision is made would be a tragedy given what we know about the importance of this area."

The disputed area is a 20-mile stretch of North Dakota land near Lake Oahe. Though the 1,172-mile pipeline, which would travel from North Dakota to Illinois, is routed primarily on private land, the area includes the Sioux's ancestral homelands, and several tribes worry that cultural artifacts have been disturbed by construction.

They also say the Army Corps of Engineers did not adequately consult with tribes when it approved Clean Water Act permits for the pipeline's water crossings. The Lake Oahe crossing is just a half-mile north of the Standing Rock reservation.

While Lake Oahe itself remains off-limits as the easement is pending, yesterday's court order allows Dakota Access LLC to resume construction within 20 miles of it ([Greenwire](#), Oct. 9). **The 20-mile section east of the lake is mostly complete. The 20-mile section west of the lake is partially complete and extremely contentious, as the Sioux say they recently discovered evidence of burial grounds in the area.**

**"This ruling puts 17 million people who rely on the Missouri River at serious risk," Standing Rock Sioux Tribe Chairman Dave Archambault II said in a statement. "And, already, the Dakota Access Pipeline has led to the desecration of our sacred sites when the company bulldozed over the burials of our Lakota and Dakota ancestors. This is not the end of this fight. We will continue to explore all lawful options to protect our people, our water, our land, and our sacred places."**

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Thousands of tribal members and environmentalists have gathered near Lake Oahe in recent months to protest the pipeline, sparking the administration's delay in issuing the easement ([EnergyWire](#), Sept. 12). The neighboring Cheyenne River Sioux Tribe has joined the litigation, and the Yankton Sioux Tribe filed a separate lawsuit.

During oral arguments last week, the three-judge panel of the appeals court appeared skeptical of the Sioux's emergency request for an injunction ([EnergyWire](#), Oct. 6). Yesterday's order concluded that the tribe did not meet the legal requirements for an injunction, but the court seemed sympathetic to its complaints about inadequate consultation.

"Although the tribe has not met the narrow and stringent standard governing this extraordinary form of relief, we recognize Section 106 of the National Historic Preservation Act was intended to mediate precisely the disparate perspectives involved in a case such as this one," the order said.

Dakota Access "has rights of access to the limited portion of pipeline corridor not yet cleared — where the tribe alleges additional historic sites are at risk," the order added. "We can only hope the spirit of Section 106 may yet prevail."

Supporters of the pipeline argued this weekend that the Army Corps and the developer exceeded consultation and National Historic Preservation Act (NHPA) requirements, pointing to a preliminary decision from U.S. District Court Judge James Boasberg that reviewed the project's history.

"As laid out in Judge Boasberg's opinion, the corps consulted 389 times with 55 tribes including the Standing Rock Sioux," the Midwest Alliance for Infrastructure Now said in a statement. "Not only was the letter of the law met, but considering the lengths the corps and Dakota Access, LLC, went, so too was the spirit."

The appeals court will now consider whether to uphold the district court's September ruling that rejected the tribe's request for a broader injunction along the length of the pipeline. Meanwhile, the core merits of the case — whether the Army Corps met its consultation and NHPA responsibilities — remain pending at the district court.

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